SUPREME COURT OF THE UNITED STATES.

No. 221.

JOSEPH SELDEN, COLLECTOR OF INTERNAL REVENUE,

vs.

THE EQUITABLE TRUST COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

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3 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Connecticut, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between The Equitable Trust Company and Joseph Selden, collector of the internal revenue of the United States for the first collection district of Connecticut, a manifest error hath happened, to the great damage of the said Joseph Selden, collector of internal revenue as aforesaid, as by his complaint appears:

We being willing that error, if any hath been, should be corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings
4 aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the fourth Monday of October, in the year of our Lord eighteen hundred and seventy-four, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court, the tenth day of October, in the year of our Lord one thousand eight hundred and seventy-four.

[SEAL.] LOREN P. WALDO,
Clerk of U. S. Circuit Court for the District of Connecticut.

It being made to appear to me that the foregoing writ of error is
5 prosecuted by direction of the Treasury Department of the United States, on motion of Calvin G. Child, esquire, attorney for the United States in the district of Connecticut, who appears for the above-named defendant, this writ of error is allowed and no bonds are required to be given.

N. SHIPMAN,
One of the Judges of the Circuit Court.

Dated Hartford, Octo. 10th, 1874.

DISTRICT OF CONNECTICUT,
New London, Octo. 10, 1874.

Due and legal service of the foregoing writ is hereby acknowledged.
EQUITABLE TRUST CO.,
By AUGUSTUS BRANDEGEE,
Its Attorney.

6 [SEAL.] The President of the United States of America to the Equitable Trust Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington on the second Monday in October, A. D. 1874, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States within and for the second circuit and district of Connecticut, on the 10th day of October, A. D. 1874, wherein Joseph Selden is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment ren-

dered against said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, at Hartford, in the district of Connecticut, this 10th day of October, A. D. 1874.

N. SHIPMAN,
One of the Judges of the Circuit Court of the United States for the District of Connecticut.

7 DISTRICT OF CONNECTICUT, *ss:*

NEW LONDON, *Octo.* 10, 1874.

Due and legal service of the foregoing citation is hereby acknowledged.

THE EQUITABLE TRUST COMPANY,
By AUGUSTUS BRANDEGEE,
Its Attorney.

The return of Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, to the foregoing writ:

The record and proceeding whereof mention is therein made follow in these words, viz:

8 EQUITABLE TRUST COMPANY
vs.
JOSEPH SELDEN.

Be it remembered, that on the 15th day of September, A. D. 1874, there was returned into this court, in obedience to a writ of certiorari heretofore, to wit, on the 7th day of September, A. D. 1874, issued out of this court to the superior court of the State of Connecticut, within and for the county of New London, a certain transcript of record and proceedings from said court, which was in the words and figures following, viz:

9 STATE OF CONNECTICUT,
County of New London:

OFFICE OF CLERK OF THE SUPERIOR COURT.

I, William L. Brewer, clerk of the superior court for the county of New London, hereby certify that the annexed copies contain a true and exact exemplification of the proceedings had in an action of assumpsit demanding for damages $2,000, wherein the Equitable Trust Company, of the town of New London, are plaintiffs, and Joseph Selden, of the town of Norwich, is defendant, before the superior court of judicature of the State of Connecticut, in the county of New London, at the September term of said court, A. D. 1874.

In testimony whereof, I have hereto set my hand and affixed the seal of said superior court this 12th day of September, anno Domini 1874.

[L. S.] WM. L. BREWER,
Clerk.

10 At a superior court of the State of Connecticut, held at New London, in said State, within and for the county of New London, on the 2d Tuesday of September, A. D. 1874.

Present, Hon. Edward J. Sanford, judge.

The Equitable Trust Company of said New London, a corporation

chartered by the State of Connecticut, having its principal office in the town of New London aforesaid, plaintiffs, against Joseph Selden, of the town of Norwich, in said New London County, defendant, in an action or plea of the case, demanding two thousand dollars damages and costs, as per copy of writ on file, dated the 15th day of July, A. D. 1874.

This action came to the present term of this court, when the defendant presented his writ of certiorari, issued by order of the Supreme Court of the United States, requiring this court to certify the records in this case, and transmit them to the circuit court of the United States for the district of Connecticut, to be held at Hartford, within and for said district, on the 3d Tuesday of September, A. D. 1874.

This court therefore orders that the files and record in this case be transmitted to said circuit court to be held at Hartford on the 3d Tuesday of September, A. D. 1874.

Attest:

WM. L. BREWER, *Clerk.*

11 To the sheriff of the county of New London, his deputy, or either of the constables of the town of Norwich, within said county, greeting:

By authority of the State of Connecticut you are hereby commanded to summon Joseph Selden, of the town of Norwich, county of New London, & State of Connecticut, to appear before the superior court to be holden at New London, within and for the county of New London, on the second Tuesday of September, A. D. 1874, then and there to answer unto the Equitable Trust Company of New London, a corporation chartered by the State of Connecticut, having its principal office in the town of New London, in a plea of the case whereupon the plaintiff declares and says that the defendant, on the first day of July, A. D. 1874, was indebted to the plaintiff in the sum of two thousand dollars for so much money before that time had and received by the defendant to and for the use of the plaintiff.

And also in the further sum of two thousand dollars for so much money before that time paid, laid out, and expended by the plaintiff for the defendant at the special instance and request of the defendant.

12 And also in the further sum of two thousand dollars for so much money before that time lent and advanced to the defendant by the plaintiff at the special instance and request of the defendant.

And also in the further sum of two thousand dollars for so much money found to be due from the defendant to the plaintiff upon an account then and there stated between them.

And also in the sum of $2,000 for monies paid involuntarily, and upon compulsion, to the defendant, he being the U. S. internal-revenue collector for the 1st *first* district of Conn., and demanding of the plaintiff said sum as tax due & collectible under the laws of the U. States, which sum was then and there paid to him under protest, and which sum in equity & good conscience the defendant had no right to demand or receive or retain, and which he ought to repay to the plaintiffs, said pretended tax being illegal & the plffs. not being liable to pay the same; and being so indebted, the defendant afterwards, to wit, on the day and year last aforesaid, at N. London aforesaid, in consideration thereof, undertook and faithfully promised the plaintiff to pay to them said several sums of money when he should be thereto afterwards requested.

13 Yet the plaintiff say that the defendant, his said several promises aforesaid not regarding, has never performed the same, though

often requested and demanded; all of which is to the damage of the plaintiff the sum of two thousand dollars.

And for the recovery thereof, with just costs, the plaintiff brings this suit.

Henry P. Bond is recognized in the sufficient sum of $10, to prosecute, &c.

Hereof fail not, but of this writ, with your doings thereon, make due return according to law.

Dated at New London, this 15th day of July, A. D. 1874.

AUGUSTUS BRANDEGEE,
Justice of the Peace.

NEW LONDON COUNTY, *ss:*

NORWICH, *July* 18th, *A. D.* 1874.

Then and there I made service of this writ by placing in the hand of the within-named Joseph Selden a true and attested copy of the same.

Attest:

O. N. RAYMOND, *Sheriff.*

Fees: Travel, .50; copy, 1.00; 2 indorsements, 24; service, 12—$1.86.

14 To the circuit court of the United States in and for the district of Connecticut, which holds a stated term on the third Tuesday of September, A. D. 1874, at Hartford, in said State:

The petition of Joseph Selden, of Norwich, in said district, respectfully represents, that he is a collector of internal revenue for the first collection-district of the State of Connecticut, duly appointed to said office, and qualified under the laws of the United States, and respectfully shows that the Equitable Trust Company, a corporation existing under and by virtue of the laws of the State of Connecticut, and having a place of business at New London, in said State, has brought against your petitioner a certain suit returnable to the superior court for New London County, in said State, on the second Tuesday of September, 1874, and caused process therein to be served upon your petitioner by summons. The nature of such suit being to recover of your petitioner sums collected by him from said trust company for taxes due the
15 United States, said sums being collected by your petitioner in his official capacity and under color of his office, and paid by said trust company under protest.

Wherefore your petitioner prays that said suit may be removed into the said circuit court in the manner provided by law.

Dated at Norwich this 20th day of August, 1874.

JOSEPH SELDEN.

UNITED STATES OF AMERICA,
District of Connecticut:

NORWICH, *August 20th*, 1874.

Personally appeared Joseph Selden, who signed the foregoing petition, and made solemn oath that the statements and allegations in said petition were true.

[SEAL.]

ALLEN TERRY,
U. S. Commissioner.

16 I, Calvin G. Child, an attorney and counsellor at law, admitted to practice in the superior court of the State of Connecticut, the

same being a court of record, and admitted to practice in all the courts of said State, and also an attorney and counsellor at law for the circuit court of the United States for said district, do hereby certify that I am counsel for Joseph Selden, the petitioner above named, and that as such counsel I have examined the proceedings against him mentioned in said petition, and have carefully inquired into all the matters set forth in the foregoing petition of said Joseph Selden, and that I believe the same to be true.

Dated at Stamford, August 20th, 1874.

CALVIN G. CHILD.

17 The President of the United States of America to the superior court of the State of Connecticut, within and for the county of New London, in the State and district of Connecticut: [SEAL.]

Being informed that there is now pending before you a suit in which the Equitable Trust Company is the plaintiff and Joseph Selden of Norwich is defendant, which suit was commenced in said superior court against said Selden for and on account of acts done by him under the revenue laws of the United States; that said suit was commenced by summons and complaint, and that said suit has not been tried; and we being willing for certain reasons that the said cause and the record and proceedings therein should be certified by said court and removed into our circuit court of the United States in and for the district of Connecticut, do hereby command you that you send without delay to the said circuit court as aforesaid the record and proceedings in said cause, so that the said circuit court may act thereon as of right and according to law ought to be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, at Hartford, in said district,
18 this 7th day of September, A. D. 1874.

LOREN P. WALDO,
Clerk of the Circuit Court of the United States,
for the District of Connecticut.

And at said term of court the plaintiff, the said Equitable Trust Company, by Augustus Brandegee, esq., their attorney, and the defendant, by Calvin G. Child, esq., district attorney of the United States for the district, duly appeared, and the defendant filed his plea in the words and figures following, viz:

19 EQUITABLE TRUST CO.
vs.
JOSEPH SELDEN.

The defendant denies the truth of the matters contained in the plaintiff's declaration, and puts himself on the court for trial.

By CALVIN G. CHILD,
His Attorney.

Plaintiff doth the like.

By AUGUSTUS BRANDEGEE,
Atty.

The plaintiffs will please to take notice that on the trial of the above-entitled cause the defendant will claim and give in evidence that, on the 30th day of August, 1873, and for a long time previous thereto, he

had been and was a collector of the internal revenue of the United States for the first collection-district of Connecticut; that as such collector he had in his hands the sum of thirteen hundred & dollars, paid to him by the plaintiffs as such collector for a tax demanded of them as bankers, which said sum was by said collector paid into the Treasury of the United States.

Whereupon the plaintiff closed the issue to the court in the words following, viz.

Plaintiff doth the like.

AUGUSTUS BRANDEGEE,
Atty.

And the said parties filed also in court their stipulation as to trial and as to the facts in the case, in the words following, viz:

20 EQUITABLE TRUST COMPANY
against
JOSEPH SELDEN, COLLECTOR.

It is agreed that the above-entitled action shall be tried by the court, and a jury is hereby in writing waived, and that said action may be tried upon the following facts, which are agreed to be true:

1. The plaintiff, the Equitable Trust Company of New London, Connecticut, is a corporation created by charter granted by the legislature of said State, and having its principal office and place of business at New Haven, within the first internal-revenue collection-district of said State. A copy of the charter of said corporation is hereunto annexed and made part of these agreed facts, and marked "Exhibit A."

2. The defendant is, and was at the time of the assessment and collection of the tax hereinafter referred to, collector of the internal revenue for said district.

3. The only business transacted by said Equitable Trust Com-
21 pany from its organization to the date hereof, and the only business carried on by it at the time of the collection of said tax hereinafter referred to, has been and is the investing its own capital in mortgage-securities on real estate and selling such mortgage securities with the company's guaranty. It does not nor has it ever collected or received any deposit of money subject to be paid or remitted on draft, check, or order, nor does it receive deposits, issue notes, or make discounts of any description whatsoever, nor do any other business than that above stated. That in investing said capital in mortgage-securities on real estate as aforesaid, the manner adopted by said corporation has been and is as follows: To make loans thereof to individuals, taking from the borrower a bond, of which a copy is hereunto annexed, marked "Exhibit B," and securing the payment of said bond by a mortgage-deed of real estate executed by the borrower, in conformity with the laws of the State where such real estate is situated. To the negotiation, guaranty, and sale of such bonds this company is exclusively devoted, and it incurs no obligation except those arising from such guaranty.

4. On the 30th day of August, 1873, the said trust company
22 paid to said collector the sum of thirteen hundred and fifty-four $\frac{38}{100}$ dollars, which said sum was collected from said trust company and paid by it against its will and upon its written protest to said collector, as a tax assessed against said trust company as bankers, under the internal-revenue laws of the United States, and on said day the money so collected was by said collector paid over into the Treasury of the United States.

5. That an appeal from such action of said collector was duly taken to the Commissioner of Internal Revenue, according to the provisions of law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof, and by said Commissioner said appeal and a claim for the repayment of said tax were disallowed, and this suit commenced within six months from the time of said decision.

6. And it is agreed that if said corporation is liable to pay a tax as a banker under the internal-revenue laws of the United States, said collector was authorized to demand and received from said corporation the sum of thirteen hundred and fifty-four $\frac{38}{100}$ dollars as aforesaid, but that if the said corporation is not so liable, all of said sum was improp-
23 erly and illegally taken from said corporation, and they have a right to demand and recover the same from said collector in the manner provided by law, and that no such right has been waived by the fact or manner of said payment.

Oct. 3d, 1874.

AUGUSTUS BRANDEGEE,
Atty. for Plff.
CALVIN G. CHILD,
Atty. for Deft.

EXHIBIT A.

Charter of the Equitable Trust Company.

24 Charter of the Equitable Trust Company, as amended.

Resolved by this assembly—SEC. 1. That (names of incorporators), with all others who may become associated with them as stockholders as hereinafter provided, be, and they hereby are, with their successors and assigns, created and established a body politic and corporate by the name of "The Equitable Trust Company," and by that name shall be capable in law to purchase and hold all kinds of property, real, personal, and mixed, and the same at pleasure to lease, hold, and convey; to sue and be sued, plead and be impleaded, in all courts; to have and use a common seal, and the same to alter at pleasure; to make and carry into effect all such by-laws and regulations as may be deemed expedient for the proper management of the affairs of the corporation not repugnant to its charter, the laws of this State, or of the United States, and generally to do and cause to be done and executed all such acts and things as may seem necessary and proper, within the limitations aforesaid, provided that the office and place of business of said company shall be in the city of New London, and shall not be located elsewhere, except by resolution of the general assembly.

25 SEC. 2. The corporation hereby created shall also have power to receive money in trust and on deposit, and to allow and pay interest on said money, and to loan the same at any rate of interest allowed by law, may take and receive on deposit, or in custody for safe-keeping, bonds, plate, jewelry, stocks, and other valuable property, upon such terms and for such compensation as may be agreed upon by the said corporation and by the depositors respectively of any such property aforesaid; may accept and execute all trusts, whether fiduciary or otherwise, as shall or may be committed to said corporation by any person, persons, or party, or by the order or direction of any court or tribunal, or any legally-constituted authority in the State of Connecticut, upon security hereinafter provided for the fulfillment of such trusts; and may make such special regulations in reference to trusts, funds,

deposits, or savings, left for accumulation or safe-keeping, as shall best aid the said depositors or parties interested by accumulating or increasing the same, allowing and receiving such interest therefor, not greater than that hereinbefore specified, as may be agreed upon.

SEC. 3. In all cases when an application shall be made to any court having jurisdiction for the appointment of a guardian of an infant, or the receiving of any estate, such court shall have power to appoint said corporation such receiver, or the guardian of the estate of such infant, upon the security herein provided for the fulfillment of said trust; and said corporation, in respect to such trusts as shall be committed to it by any court or tribunal under the provisions of this act, shall be
26 subject to all such orders and decrees as said court shall make and pass in respect thereto, and to the investment thereof; and shall be liable to account at such time or times and in such way or manner as said court or tribunal shall from time to time direct.

SEC. 4. It shall be lawful for the corporation hereby created to take and hold any real or personal estate, in trust or otherwise, as security for or in payment of loans and debts due or to become due to the said company; to purchase real estate or other property at any sale made in virtue of any loan, debt, or mortgage made or held by said company, and to receive or take in satisfaction of any such loan or debt any real estate or other property, and to hold, lease, and convey the same at pleasure.

SEC. 5. All the capital stock, property, and estate of every kind belonging to said company shall be and stand charged with the fulfillment of said trusts and the payment of said deposits, and said trusts and other funds, as the first and prior lien thereon, in case of the failure of said corporation.

SEC. 6. The capital stock of said company shall not be less than one thousand shares of one hundred dollars each, with the privilege of increasing the same by a vote of the trustees to any number not exceeding ten thousand shares in the whole, which shall be transferable according to such rules as may be established by the trustees of said company. At the time of subscribing for the capital stock of said company, there shall be paid in ten dollars on each share thereof, and the remaining ninety dollars per share shall be paid into the treasury of said corporation, as required by the trustees, in and by a call pub-
27 lished in one or more newspapers published in the city of New London, and every subscriber who shall neglect to pay said residue of each share by him or her subscribed, in the manner aforesaid, shall forfeit to said corporation his or her share or shares and all payments made thereon, together with the profits that may have accrued thereon.

And said corporation shall not commence the business authorized in the second section of this act until all the capital stock is subscribed for and taken and at least one hundred thousand dollars is paid in, and the balance, if any, paid, or secured to be paid, either by a first mortgage or mortgages of real estate of the value one-quarter more than the amount to be secured, or by the pledge of the bonds of the United States, or of the several States, or either of the incorporated cities of this State, of at least equal value with the capital so secured.

SEC. 7. To carry out the provisions of this charter, and to organize the said corporation, (names of three incorporators,) and in case of the disability of either of them, then any two of them are authorized and appointed to receive subscriptions to the capital stock thereof and the payment of the first installment thereon; and when one thousand shares

of said stock shall have been subscribed for, and the first installment has been paid thereon, upon call of the said (names of three incorporators,) or in the case of the disability of either of them, then of the other two, by notice published in a newspaper printed in New London ten days before the time of meeting, the subscribers may meet at the time and place named in said call, for the purpose of choos-
28 ing trustees, who, when chosen, shall continue in office until the annual meeting of stockholders, which shall be held on the first Wednesday of June in each year, or on such other day in the month of June as shall be determined by the by-laws of said corporation, and until others are chosen in their room.

SEC. 8. All the affairs of said company shall be managed and controlled by a board of not less than five nor more than twenty-five trustees, at least three of whom shall be resident of the city of New London, who shall be chosen by ballot solely from and among and by the stockholders in general meeting. The trustees may choose one of their number for president, and, whenever the place of president or trustee shall become vacant by resignation or otherwise, may fill the vacancy from among the trustees or other stockholders for the remainder of the year. The trustees may appoint a vice-president, treasurer, secretary, and such other officers or agents as may be deemed necessary for performing the business of said corporation, fix their compensation, and determine the nature and amount of securities to be given by any of them for the faithful performance of their duties. All elections for president or trustees shall be by ballot, and said trustees shall determine how many of their own body shall constitute a quorum for the transaction of business.

SEC. 9. Special meetings of the stockholders may be called whenever the board of trustees shall judge proper, and at least five days' notice of any general or special meeting shall be given in some newspaper printed in the city of New London, or in such other manner as the trustees
29 may order. And at any meeting of the stockholders all questions shall be determined by a majority of votes, allowing one vote to each share; and said stockholders shall be entitled to vote in person or by proxy duly appointed.

SEC. 10. It shall be the duty of the president and treasurer of said corporation annually, on the first day of January, or within thirty days thereafter, to make out, under oath, and deliver to the comptroller of public accounts, a statement of the amount of the capital stock, the amount paid in, the amount of moneys held in trust or on deposit with them, and generally the assets and liabilities of said company, which said statements shall be entered at length by the comptroller of public accounts in a book kept for that purpose.

SEC. 11. This act may be altered, amended, or repealed by the general assembly at its pleasure.

Approved June 19th, 1869.

30 EXHIBIT B.

1000] UNITED STATES OF AMERICA. [1000

Number 1.

Real-estate mortgage-bond.

Negotiated and guaranteed by the Equitable Trust Company of New London, Connecticut.

Know all men by these presents that I, A. B., of the county of C., State

of D., am justly indebted to the Equitable Trust Company of New London, Connecticut, in the sum of one thousand dollars, lawful money of the United States, which sum I promise to pay to the Equitable Trust Company, or to the registered holder hereof, or, if not registered, to bearer, on the first day of May, A. D. 1878, together with interest thereon from and after the date hereof, at the rate of seven per cent. per annum, at the office of the Equitable Trust Company, in the city of New York, on the first days of May and November in each year, on presentation and surrender of the annexed interest coupons as they shall severally become due, as provided herein, and at the rate of 10 per cent. thereon after default of payment of the principal hereof.

This bond shall pass by delivery or by transfer on the books of the company in the city of New York. No transfer except on the books of the company shall be valid unless the last transfer shall have been to bearer. This bond shall be subject to registration or transferable to bearer at the option of any lawful holder thereof. This bond shall not be negotiable until guaranteed by the Equitable Trust Company under its seal. It is hereby expressly agreed that if default be made in the payment of any one of the installments of interest aforesaid at the time aforesaid, when and where the same shall become due and payable, and such default shall continue for thirty days after such installment becomes due and payable as aforesaid, then, and in that event, the said principal sum of one thousand dollars shall, at the election of the legal holder hereof, at once become due and payable, anything hereinbefore contained to the contrary notwithstanding, such election to be made at any time after the expiration of said thirty days without notice.

It is further expressly agreed that if at any time, until the principal shall be fully paid, the premises made security for this bond, or any portion thereof, shall be sold for any tax or assessment whatsoever, or the undersigned shall fail to keep the said premises insured to the amount of $10,000, and the insurance policies properly assigned to E. F., trustee, then and in that event the said principal sum of one thousand dollars shall, at the election of the legal holder hereof, become due and payable, anything hereinbefore contained to the contrary notwithstanding.

In witness whereof I have hereto affixed my hand and seal at L., this first day of May, A. D. 1873.

A. B. [L. S.]
—— —— [L. S.]

For value received the Equitable Trust Company hereby guarantees the payment of the principal and interest of the above bond according to the terms thereof.

[SEAL.] EQUITABLE TRUST COMPANY,
By S. T., *President.*

M] [M

This bond is one of ten bonds, amounting in the aggregate to ten thousand dollars, given for an actual loan of money made by the Equitable Trust Company to A. B., and secured by a trust-deed from A. B. to E. F., of X., duly recorded, and conveying property situated in the town of L., county of C., and State of D., valued at not less than twenty thousand dollars.

35 L., May 1, 1873. 35

Due at the office of the Equitable Trust Company, in the City of New

York, to bearer, on the first day of May, 1878, thirty-five dollars, without grace, and with interest at the rate of ten per cent. after default, being an installment of interest due on that day upon real-estate mortgage-bond of even date herewith for one thousand dollars.

Coupon No. 10. No. 1. A. B.

35 L., May 1, 1873. 35

Due at the office of the Equitable Trust Company, in the city of New York, to bearer, on the first day of November, 1877, thirty-five dollars, without grace, and with interest at the rate of ten per cent. after default, being an installment of interest due on that day upon real-estate mortgage-bond of even date herewith for one thousand dollars.

Coupon No. 9. No. 1. A. B.

35 L., May 1, 1873. 35

Due at the office of the Equitable Trust Company, in the city of New York, to bearer, on the first day of May, 1877, thirty-five dollars, without grace, and with interest at the rate of ten per cent. after default, being an installment of interest due on that day upon real-estate mortgage-bond of even date herewith for one thousand dollars.

Coupon No. 8. No. 1. A. B.

35 L., May 1, 1873. 35

Due at the office of the Equitable Trust Company, in the city of New York, to bearer, on the first day of November, 1876, thirty-five dollars, without grace, and with interest at the rate of ten per cent. after default, being an installment of interest due on that day upon real-estate mortgage-bond of even date herewith for one thousand dollars.

Coupon No. 7. No. 1. A. B.

35 L., May 1, 1873. 35

Due at the office of the Equitable Trust Company, in the city of New York, to bearer, on the first day of May, 1876, thirty-five dollars, without grace, and with interest at the rate of ten per cent. after default, being an installment of interest due on that day upon real-estate mortgage-bond of even date herewith for one thousand dollars.

Coupon No. 6. No. 1. A. B.

35 L., May 1, 1873. 35

Due at the office of the Equitable Trust Company, in the city of New York, to bearer, on the first day of November, 1875, thirty-five dollars, without grace, and with interest at the rate of ten per cent. after default, being an installment of interest due on that day upon real-estate mortgage-bond of even date herewith for one thousand dollars.

Coupon No. 5. No. 1. A. B.

35 L., May 1, 1873. 35

Due at the office of the Equitable Trust Company, in the city of New York, to bearer, on the first day of May, 1875, thirty-five dollars, without grace, and with interest at the rate of ten per cent. after default, being an installment of interest due on that day upon real-estate mortgage-bond of even date herewith for one thousand dollars.

Coupon No. 4. No. 1.
A. B.

35 L., May 1, 1873. 35

Due at the office of the Equitable Trust Company, in the city of New York, to bearer, on the first day of November, 1874, thirty-five dollars, without grace, and with interest at the rate of ten per cent. after default, being an installment of interest due on that day upon real estate mortgage-bond of even date herewith for one thousand dollars.

Coupon No. 3. No. 1.
A. B.

35 L., May 1, 1873. 35

Due at the office of the Equitable Trust Company, in the city of New York, to bearer, on the first day of May, 1874, thirty-five dollars, without grace, and with interest at the rate of ten per cent. after default, being an installment of interest due on that day upon real-estate mortgage-bond of even date herewith for one thousand dollars.

Coupon No. 2. No. 1.
A. B.

35 L., May 1, 1873. 35

Due at the office of the Equitable Trust Company, in the city of New York, to bearer, on the first day of November, 1873, thirty-five dollars, without grace, and with interest at the rate of ten per cent. after default, being an installment of interest due on that day upon real-estate mortgage-bond of even date herewith for one thousand dollars.

Coupon No. 1. No. 1.
A. B.

Equitable Trust Co. Equitable Trust Co.

(Indorsed:) No . Real-estate mortgage-bond. Negotiated and guaranteed by the Equitable Trust Comp'y, of New London, Connecticut, United States of America. $1,000; interest seven per cent., payable May 1st and November 1st, in the city of New York.

NEW YORK, 18 .

This bond is registered on the books of the Equitable Trust Company in the name of .

Date of transfer, . To whom transferred, . Attested by .

31 And the parties being fully heard with their witnesses and counsel, the court on the 10th day of October, A. D. 1874, filed its opinion and finding of facts in the words and figures following, viz:

32 EQUITABLE TRUST COMPANY
vs.
JOSEPH SELDEN.

This case was tried by the court, a jury having been waived by written stipulation of the parties. The counsel of the respective parties having been thereunto duly authorized, agreed that the statement of facts which is signed by them and which is made a part of the record is true. The court upon the hearing and trial of said cause also finds that said agreed statement contains the facts and all the facts which are proved in the cause, and is true, and said statement is hereby incorporated into and made a part of this finding.

The conclusion of law upon the foregoing and agreed facts is that the plaintiff corporation was not a bank or a banker under the provisions of the 79th section of the act of June 30, 1864, (13 U. S. Stats. at Large, page 251,) as amended by the 9th section of the act of July 13, 1866, (14 U. S Stats. at Large, page 115,) at the time when said tax was paid to the defendant, and said suit was brought, and that said tax was improperly exacted.

Section 3471 of the Revised Statutes of the United States is a transcript of that portion of the 79th section of the act of June 30,
33 1864, as amended, which contains the definition of a bank or a banker, and is as follows: "Every incorporated or other bank, and every person, firm, or company having a place of business where credits are opened by the deposit or collection of money or currency, subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bullion, bills of exchange or promissory notes are received for discount or for sale, shall be regarded as a bank or as a banker."

Although said corporation is empowered by its charter to receive money upon deposit, it is expressly found that it does not collect nor has it ever collected or received any deposit of money subject to be paid or remitted upon draft, check or order. It does not receive or open credits by the deposit or collection of moneys or currency. The plaintiff's sole business consists in the loaning or investment of its capital upon mortgages of real estate, and in the sale of mortgage securities, which are the evidence of such loans, the corporation also guaranteeing to the purchaser the payment of such securities. The defendant conceding that the plaintiff corporation is not included within the
34 first clause of the section just cited, strenuously contested that it is a bank or a banker within the second and third branches of the definition contained in the act.

In my opinion, by the clause "where money is advanced or loaned on stocks, bonds, bullion, bills of exchange or promissory notes," is meant the loan of money upon the pledge, hypothecation, or mortgage of the personal property therein mentioned, as a collateral security for the repayment of the amount loaned, and that the loaning of money, where the loans are evidenced merely by the note of the borrower without security, is not intended to be embraced in this part of the definition. The business of the plaintiff is the loan of money upon mortgages of real estate, and no money is loaned upon bonds or any personal security; a bond is given to the lender as an evidence of the sum loaned and of the borrower's promise to repay it; the money is loaned, not upon the bond, but exclusively on or upon the mortgage of real estate. The business which is referred to in this clause is that portion of the ordinary and well-

known business of a banker, which consists in the advancing or loaning of money upon the pledge or mortgage of stocks and of that large
35 class of securities commonly styled bonds, usually of the Government, or of different States, or of municipal or other corporations, and upon the pledge of other personal property. Bankers do not usually or ordinarily engage in the business of loaning upon real estate, and when a person who does not receive money upon deposit confines himself to loaning his capital upon real-estate mortgages of a character more or less permanent, he is not a banker within the common acceptation of the term, nor does he, in respect to that department of his business, come within the definition of a banker which has been given by Congress.

Neither does the plaintiff receive stocks, bonds, or promissory notes for discount or sale within the meaning of the third clause of the section. A banker or a broker who receives, for discount or sale, bonds, notes, or stocks, receives not his own property but the property of his customer. This part of his business consists either in discounting the notes or bills of exchange offered to him by others, or in receiving their stocks, bonds, bullion, or commercial paper and selling the same upon commission or otherwise. The loaning of money secured by bond and mortgage is not the discount of notes referred to in the statute;
36 and where a capitalist sells his own stocks or bonds exclusively, he cannot be said to receive stocks or bonds for discount or sale. A commission-merchant receives the property of others for sale; but a merchant who sells only his own merchandize cannot justly be said to receive property for sale. Such language is naturally and ordinarily understood to apply solely to those dealers who act as agents in the sale of property belonging to their principals, and not to that class of merchants who buy and sell simply upon their own account.

The second and fourth rules for the interpretation of statutes which are laid down in U. S. vs. Isham, 17 Wall., 504, seem to me to be of importance in determining the construction which should be given to the sections now under consideration. The court say, "The words of the statute are to be taken in the sense in which they will be understood by that public in which they are to take effect," and "if there is a doubt as to the liability of an instrument of taxation, the construction is in favor of the exemption, because, in the language of Pollusk, C. B., in Gin vs. Scudds, "a tax cannot be imposed without clear and express words for that purpose." Guided by these rules, I am of opinion that the construction which the defendant has given to the statute ought not to prevail.

37 Let judgment be entered for the plaintiff for $1,354.38, and interest from Aug. 30, 1873.

N. SHIPMAN,
District Judge.

Wherefore it is considered by the court here, this 10th day of October, A. D. 1874, that the plaintiff do recover of the defendant the sum of thirteen hundred and sixty-three dollars and sixty-two cents ($1,363.$\frac{62}{100}$) damages, and the sum of sixty-three dollars and thirty-five cents costs of suit, and have execution therefor.

Attest:

LOREN P. WALDO, *Clerk.*

38 I, Loren P. Waldo, clerk of the circuit court of the United States for the district of Connecticut, do certify that the foregoing is a

true copy of the record of judgment recorded in this court in the cause of the Equitable Trust Company against Joseph Selden.

In testimony whereof I have set hereto my hand and the seal of said court at Hartford, in said district, this 28th day of October, A. D. 1874.

[SEAL.] LOREN P. WALDO, *Clerk.*

(Indorsement on cover:) No. 221. Joseph Selden, collector of internal revenue, plaintiff in error, vs. The Equitable Trust Company, Connecticut. C. C. U. S. Filed 2nd November, 1874.

In the Supreme Court of the United States.

OCTOBER TERM, 1876.

JOSEPH SELDEN, COLLECTOR, ETC., *vs.* THE EQUITABLE TRUST COMPANY. } No. 221.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

Brief for the Plaintiff in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1876.

JOSEPH SELDEN, COLLECTOR, ETC., vs. THE EQUITABLE TRUST COMPANY. } No. 221.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

BRIEF FOR THE PLAINTIFF IN ERROR.

STATEMENT.

In this action, instituted by the Equitable Trust Company of New London, Conn., against Joseph Selden, collector of internal revenue for the first internal-revenue district of that State, a jury was waived and the cause submitted upon these agreed facts.

The only business ever transacted by said corporation from its organization was investing its own capital in mortgage-securities on real estate, and selling such mortgage-securities with the company's guarantee. It never collected drafts, checks, or orders, nor did it ever receive

deposits, issue notes, or make discounts of any description whatever, nor do any other business than that above stated. The capital was invested as above by making loans thereof to persons, taking from them a bond with interest-coupons attached, (forms of which will be found in the record, pp. 9 to 12, but which are not copied here because substantially in common form, except that there is a guarantee of it,) secured by a mortgage-deed of real estate. To the negotiation, guarantee, and sale of such bonds this company is exclusively devoted, and it incurs no other obligation except those arising from such guarantee. The plaintiff in error, originally defendant, on the 30th day of August, 1873, in his official capacity, collected $1,354.38 of said company as and for a tax assessed against said trust company as bankers, the payment being involuntary and under protest. (Record, 6.) The only question raised is whether or not the Equitable Trust Company was liable to be assessed as bankers on account of the business so done, which was within the purview of its charter. (Record, 7.) The circuit court found the corporation not liable to the tax, and gave judgment accordingly in its favor. (Record, 13, 14.)

ASSIGNMENT OF ERRORS.

1. The plaintiff in error assigns for error the judgment rendered by the circuit court in this cause, as follows: "Wherefore it is considered by the court here on this 10th day of October, A. D. 1874, that the plaintiff do recover of the defendant the sum of thirteen hundred and sixty-three dollars and sixty-two cents ($1,363.62) damages, and the sum of sixty-three dollars and thirty-five cents costs of suit, and have execution therefor." (Record, 14.)

2. That judgment should have been rendered in favor of Mr. Selden for his costs.

3. The finding of law of the court, upon the agreed facts, "that the plaintiff corporation was not a bank or a banker under the provisions of the seventy-ninth section of the act of June 30, 1864, (13 United States Stats. at Large, page 251,) as amended by the ninth section of the act of July 13, 1866, (14 United States Stats. at Large, page 115,) at the time when said tax was paid to the defendant, and said suit was brought, and that said tax was improperly exacted." (Record, 13, folio 32.)

STATUTES.

The act of June 30, 1864, c. 173, § 79, above-mentioned, in item "one," declares that "every person, firm, or company, and every incorporated or other bank, having a place of business where credits are opened by the deposit or collection of money or currency, subject to be paid or remitted upon draft, check, or order, *or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks,* BONDS, *bullion, bills of exchange, or* PROMISSORY NOTES *are received for discount* OR SALE, shall be regarded as a banker under this act." (13 Stats., 251.)

The same chapter twice declares, in sections 82 and 126, that the word person shall be deemed to include corporations. (*Id.*, 258, 287.)

So far as the sentence above italicized is concerned, the act of July 13, 1866, c. 184, § 9, repeats the language of that of June 30, 1864, as above quoted. (14 Stats., 115. It is reiterated in R. S., sec. 3471.)

BRIEF.

The sole business of this corporation is to advance or loan money upon bonds, which take the place of promis-

sory notes, are made transferable (unless registered) by delivery, (Record, 10,) and are taken by the company for sale, and not to be held as an investment. The avowed purpose is to make a profit by the *negotiation* of these bonds, &c., and not to retain them as a permanent investment of the corporate capital. The company acts between the borrower seeking a loan and the lender seeking an investment, and derives a profit from each. The profit to be made by the sale of the bond is the declared object of the advance or loan made upon it. Certainly, then, this business comes within the spirit of this section as well as within its literal language. One who maintains a place of business where he habitually loans money upon promissory notes is declared to be a banker; so is one who takes such notes for sale. It can make no difference in his business character whether the loan or advance is made upon the borrower's own note or upon one of a third person previously held by him; nor whether the loan be upon a note or a bond; nor whether, if a bond, it be the bond of the borrower or of some third person, corporation, or body-politic; nor whether they are taken upon the sole responsibility of the signers, or those by whom they were originally issued, or are secured by mortgage of real or personal estate, or otherwise. The essence of the transaction, which makes it taxable as banking business, is that it is making loans or advances of money upon security; and upon the very class of security mentioned in the statute. It is evident (Record, 6; folio 21, bottom; close of item 3) that the *bonds* only are sold, the mortgages being retained by the company to secure their guaranty as well as the original paper, though, of course, the sale of the bonds secured would convey an equitable interest in the

mortgage. In the illustration given in the record, ten bonds, of $1,000 each, with coupons attached, are secured by one mortgage of $10,000, (Record, 10, bottom, "M.") Each of these ten bonds may be sold to a different person, the mortgage held by the company being security to each and all of the parties interested. The *bond*, the personal security, is, after all, the instrument that is negotiated. In effect, it is a discount of the paper, the corporation turning it into money, instead of retaining it till maturity. This is not only banking under the specific definition of the section in question, but is so in the ordinary acceptation of that term.

Bouvier defines a banker as one who receives money upon deposits, *effects loans*, discounts notes, &c.

The next to the opening paragraph of Grant's Treatise on Banking is this: "A less ordinary, but still not uncommon, relation between banker and customer is that the banker *makes advances to the customer*, or allows him to overdraw his account, charging interest on the advances, and, in most cases, *requiring a deposit of securities*," &c.

Such were substantially the operations of this corporation.

"A banker is a dealer in capital, an intermediate party between the borrower and the lender." (Curtis *vs.* Leavitt, 166, 167.) The difference between the terms at which he borrows and lends constitutes his profits. (1 McCulloch Com. Dict., 86.) It cannot be essential that, having capital, he makes a loan upon the bond, and subsequently replaces it by a transfer of the bond upon which he holds himself liable by guaranty.

By this system of negotiation and transfer, credits and business facilities were furnished to the obligees in the

bonds taken. "Originally the business of banking consisted only in receiving deposits, such as bullion, plate, and the like, for safe-keeping until the depositor should see fit to draw it out for use, but the business, in the progress of events, was extended, and bankers assumed to discount bills and notes *and to loan money upon mortgage, pawn, or other security*, and at a still later period to issue notes of their own," &c. (Oulton *v.* Savings Inst., 17 Wall., 118.) The opinion continues: "Modern bankers frequently exercise any two or even all three of these functions, but it is still true that *an institution prohibited from exercising any more than* ONE *of those functions is a bank* in the strictest commercial sense, and unless such a bank is brought within the proviso under consideration, is equally subject to taxation as if authorized to make discounts and issue circulation as well as deposits." (*Ib.*, 119, citing numerous cases.)

"Having a place of business where deposits are received and paid out on checks, and [or] *where money is loaned upon security*, is the substance of the business of a banker." (Warren *vs.* Shook, 91 U. S., 710.)

"Another branch of the banking business is the discounting promissory notes and bills of exchange, or *loaning money upon mortgage* or other security." Ang. and Ames on Corps., (4th ed.,) § 54, note 3; Am. Ency., tit. "Bank."

In the last edition of Appleton's American Cyclopædia, title "Bank," vol. 2, p. 273, it is said the origin of the word is derived from the table, bench, or counter over which loans were effected. The primary purpose, then—the essence of the business—is *effecting loans.* The encyclopædist says, *ubi sup.:* "The banker was originally a changer, and he stood in the market-place

91 U S

and furnished such different kinds of money as were demanded. By degrees he took funds on deposit, *made advances upon securities*, merchandise, pledges, *titles to property, family papers*, &c., and became finally what we now know as a banker." * * * "Banks are designed * * for extending aid to business by granting loans or discounts on notes, *bonds*, stocks, or *other securities*. These institutions are of three kinds, and may be classed as follows: banks of deposit; * * * banks of discount furnish loans upon drafts, promissory notes, *bonds*, or *other* securities; and banks of circulation." * * (*Ib.*)

We have made these several citations because the language found in the last paragraph of record-page 13, folio 34, of the opinion, seemed to us peculiar and inaccurate; but we would not like to criticise it unless we found, or thought we did, high authority to support a different view of the functions of a bank, and of the meaning of the word "banker." The learned judge observes, "In my opinion, by the clause 'where money is advanced or loaned upon stocks, bonds, bullion, bills of exchange, or promissory notes,' is meant the loan of money upon the pledge, hypothecation, or mortgage of the personal property therein mentioned, as a collateral for the repayment of the amount loaned, and that the loaning of money where the loans are evidenced merely by the note of the borrower, without security, is not to be embraced in this part of the definition." (Record 13, folio 34.) Why this restricted meaning is given to the comprehensive language of the statute, we are unable, after much reflection, to perceive. The opinion proceeds: "The business of the plaintiff is the loan of money upon mortgages of real estate, and *no money is loaned upon bonds or any personal security;* (?) a bond is given to the lender

as evidence of the sum loaned, and of the borrower's promise to repay it; the money is loaned, not upon the bond, but *exclusively* [?] on or upon the mortgage of real estate." (*Ib.*) This language is not justified by the agreed facts. (Record 6, folio 21, paragraph 3.) It is evident from the statement there made, that the bond of the borrower, which serves the precise purpose of the promissory note in more common use in New England "as an evidence of the sum loaned and of the borrower's promise to repay it," is taken and relied upon as the "personal security" of the debtor for payment of the debt. If by defect of title, fire, and lapse or loss of the insurance, depreciation, or otherwise, the realty proved insufficient, the borrower would legally and in fact be held responsible for the whole sum lent, with interest. Nay, the real estate is only resorted to, as collateral, in case he fails to make good his personal obligation to pay. The judge next remarks that the statutory clause in question refers to the well-known business of a banker in making advances or loans upon pledge of *personal* property, adding: "Bankers do not *usually* or ordinarily engage in the business of loaning upon real estate; and when a person who does not receive money upon deposit confines himself to loaning his capital upon real estate mortgages of a character more or less permanent, he is *not a banker within the common acceptation of the term*," nor under the statute. (Record, 14, top.) Remembering that this language is applied to an artificial, legislative creature, the sole object and function of whose corporate existence, for which alone it lives, moves, and has its being, is to effect loans, we cannot discover the propriety nor legal correctness of the idea thus enunciated, nor the justness of the distinction drawn between the

taking of real and of personal property as collateral to the obligation of the borrower. It is doubtless true that, for reasons of convenience, more ready conversion, division among a larger number of purchasers, and because of its far greater abundance in the hands of borrowers, and its freedom from liens, claims for dower, homestead, &c., personalty is employed more frequently than realty for such security; but it is *not true* that a resort to mortgages of land for this purpose prevents a man or corporation from being "a banker within the common acceptation of the term," and, consequently, within the definition of the statute.

We are the more surprised at the view taken by the learned district judge, because of the multitude and uniformity of the authorities to the contrary. Nothing but our respect for him has led to so numerous citations and such a prolonged discussion of this point. So well known and elementary a writer as Chitty says: "A bill of exchange, payable at a fixed period, is *one of the most usual* securities for the loan of money by the way of discount, as the lender, by retaining the amount of discount, obtains compound interest, which he cannot do by the intervention of a bond or mortgage. *But where a loan is considerable*, or a security is to be executed for future advances, *a higher security is usually required, as a mortgage or bond or warrant of attorney, so as to bind the land* and affect the heir of the borrower; and it is *very usual* in commercial transactions for *bankers* and others, who are required to make advances from time to time to a tradesman, either in acceptances or cash, beyond the amount of the money and securities deposited by him in their hands, *to take the latter security*, with a defeasance enabling them to sign judgment and issue execution even

before they have been actually obliged to pay money," &c., &c. (3 Chitty on Com. Law, 309, 310.) Upon a subsequent page of the same volume, that writer says: "The bonds which most frequently give rise to questions connected with trade are *those given to bankers as security for advances.*" (*Id.*, 592.)

Authorities might be multiplied and argument extended *ad libitum*, but it is not deemed necessary. Sufficient has been adduced to show that the corporation at bar was a banker, in ordinary legal parlance, and that it was within the purview of the statute, and carrying on a lucrative business, which it was not intended should escape those burdens of taxation which the war threw upon all persons in the land, natural and artificial, since there was nothing in its character, or the phraseology of the law to entitle it to exemption. The judgment in its favor, therefore, ought to be reversed.

We repeat, also, the idea that these bonds were received for discount and sale, *i. e.*, to be sold after being discounted, within the terms and meaning of the last sentence of the section in question.

EDWIN B. SMITH,
Assistant Attorney-General.

SUPREME COURT

OF THE

UNITED STATES.

No. 221.

JOSEPH SELDEN, COLLECTOR OF INT'L REVENUE,

vs.

THE EQUITABLE TRUST COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF

CONNECTICUT.

DEFENDANT'S BRIEF.

JEREMIAH HALSEY,
AUGUSTUS BRANDEGEE,
Counsel for Defendants in Error.

SUPREME COURT OF THE UNITED STATES.

No. 221.

JOSEPH SELDEN, COLLECTOR,

vs.

THE EQUITABLE TRUST COMPANY.

In Error to the Circuit Court of the United States for the District of Connecticut.

BRIEF FOR DEFENDANT'S IN ERROR.

STATEMENT OF THE CASE.

The Equitable Trust Company is a Corporation chartered by the Legislature of the State of Connecticut, having its office and principal place of business at New London, within the First Internal Revenue District of that State.

On the 30th day of August, 1873, said corporation paid upon compulsion and after due written protest, to the plaintiff in error, who was the Collector of Internal Revenue for that district, the

sum of $1,354\frac{25}{100}$ as a tax claimed to have been assessed against said Company as "*Bankers*" under the 79th section of the act of June 30th, 1864, as amended by the 9th section of the act of July 13th, 1866, being section 3407, p. 673 of the revised statutes of the United States.

Appeal was duly taken according to the provisions of the law in that regard, and disallowed by the Commissioner of Internal Revenue, and suit brought within six months thereafter. It is agreed, upon the record, that if said corporation is not liable to be taxed as a "*Banker*" under said act, it may recover the sum so paid to the plaintiff, and has waived none of its rights.

Record, p. p. 6 and 7.

It is found that the only business transacted by said corporation has been and still is, "The investment of its own capital in *Mortgage Securities* on real estate, and selling the same with its guaranty. That it does not, nor has it ever collected or received any deposit of money subject to be paid or remitted on draft, check or order, nor does it receive deposits, issue notes, or make discounts of any description whatsoever, nor do any business other than that above stated.

Record, p. 6, Sec. 3.

Upon these facts the Circuit Court (Shipman, J.) ruled that the defendants were not "*Bankers*" within the meaning of the Internal Revenue act, and not liable to pay said tax, and were entitled to recover of the plaintiff in error the sum of $\$1,363\frac{62}{100}$.

To reverse this ruling the present writ of eror is brought to this Court.

QUESTION.

The sole question, therefore, presented by this Record is:

Whether a corporation doing such a business is a "*Banker*" within the meaning of Sec. 3407, p. 673, of the revised statutes of the United States?

It is respectfully submitted that it is not.

POINTS.

FIRST.

1. BANKING.—At Common Law, included the right—

1. To issue notes.
2. To make discounts.
3. To receive deposits.

In some cases all of these functions were exercised by the same institution, in some only two of them. and sometimes but one.

Bank of Savings vs. Collector, 3 Wall, 495.
Abbot's Dig. Corporations Title, Banks, p. 56, Secs. 1 and 2.

These institutions are said to have originated in Venice, so early as the twelfth century, when in the infancy of Commerce the Jews, who were the first bankers, were wont to assemble in the market place, seated on a bench (*banco*) practising their usurious traffic by lending money on pledges or deposits of collaterals.

2. To these three departments of Banking at Common Law, (i.e.) Circulation, Discount and Deposit, Congress, in the exercise of its undoubted power to collect revenue, added by a sort of statutory enlargement, three others, viz:

1. "Having a place of business where credits are opened by the deposit or collection of money or currency, subject to be paid or remitted upon draft, check or order."
2. "Having a place of business where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes."
3. "Having a place of business where stocks, bonds, bullion, bills of exchange, or promissory notes are received for discount, or for sale."

Unless the defendants are included within one or the other of these statutory classifications, they cannot be held to be "bankers" within the intendment of the revenue laws of the United States.

3. It was not claimed upon the trial below, nor will it now be maintained, that the defendants are within the *first* of these classifications, for it is expressly found by the Court below, and it is also agreed in the stipulation of facts, "that they do not, nor have they ever collected or received any deposits, subject to be paid or remitted upon draft, check or order, nor receive or open credits by the deposit of money or currency, subject to be so paid or remitted.

Record, p. 6, Sec 3. p. 13, Sec. 33.

But it was contended that the defendants were within the provisions of the second or third of these classifications, and this is the real question before the Court.

SECOND.

The defendants are not embraced within the *Second* of these classifications.

They do not have a place of business where money is advanced, or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes.

1. This question, is one purely of statutory construction; it is within a very narrow compass. It is not fruitful of illustration, and is to be determined mainly by a resort to those well settled principles of construction which have been formulated into "Canons," and which have frequently been adopted and applied by this Court.

One of the most familiar, as it is one of the most authoritative of these canons is:

"That in the construction of statutes, words are to be taken in their common, customary and popular use. That meaning is to be imputed which is commonly intended when employed upon the same subject matter with which the statute is conversant."

1 Swift's Dig., top p. 12.

Dwarris, the great authority on this subject, lays down as a rule of primary importance, "that the words of a statute are to be taken

in their ordinary and familiar sense and import. Regard is to be had for their general and popular use, and the meaning of words spoken or written, ought to be allowed as it hath customarily been taken, *Loquendum est ut Vulgus.*"

Dwarris on Statutes, p. 573.

Tested by this rule, is the investment of its own capital upon *mortgage security of real estate:* "an advance or loan upon stocks, bonds, bullion, bills of exchange, &c.," according to the common customary and popular use and understanding of these words?

2. The custom of advancing money upon stocks, bonds, bullion, &c., *as collaterals* has existed for a long period. It is a perfectly well known, legitimate and lucrative portion of a banker's or broker's business. It had attained, during the war, unusual proportions and was an inviting field for the collection of revenue.

Congress in using the ordinary and well recognized terms which popularly describe this branch of a banker's business, must be presumed to have intended it, and it alone.

The business of investing money on *mortgage security*, though not as extensive, was equally well known to the Congress who passed the act of June 30th, 1864. By a single word (mortgage) they could have included it. That they did not use the apt words which would have excluded all doubt, is conclusive that it was not so intended. "*Expressio unius, Exclusio est Alterius.*"

3. It is to be observed also, that the statute we are considering applies not to an act but to a *business*. It is not every loan or advance of money which is within its provisions. It is the *business* of loaning or advancing it. Nor is it the business of loaning or advancing money *generally*, which is embraced within this statutory definition—but the business *only*, as it is conducted in certain enumerated branches or methods. These methods or modes of operation are distinctly specified, and there is no clause or word of general import added (such as &c., or otherwise) to embrace the varieties unenumerated.

The description of a banker's business includes, all loans on stocks, bonds, bullion, bills of exchange and promissory notes.

It is respectfully submitted that it does not include loans on jewels, plate, clothing, houses, vessels, chattels or *real estate*. These latter were not within the ordinary business of a banker at common law, they are not within it as it is popularly understood in the speech of people, (*ut vulgus loquitur*), nor are they added by statutory enactment.

4. It was contended by the learned United States Attorney in the Court below, because a "bond" was taken as an evidence of the debt when a loan was made upon mortgage, that this brought the transaction within the meaning of the statutes, "a loan or advance on stocks, '*bonds*,'" &c. This argument confounds the incident with the principal.

The business of the Company is found to be "the investing of its Capital *in mortgage securities on real estate*."

Record, p 6, Sec. 3.

The "bond" is not the security, the mortgage is. The bond is not even the debt, but only the evidence of it. The money is not loaned upon the bond, or upon the faith of it, but upon the security exclusively of the *real estate*.

Lord Hardwicke draws the same distinction, with his usual discrimination in Walker vs. Symonds, where he lays down the proposition "that a promissory note is the evidence of the debt, but no security for it."

5 Swan's, 81, Note A.

The statute itself draws the same distinction when it describes these loans as "*upon stocks, bullion, &c.*," manifestly implying that the loans are upon them as collateral security, although it is obvious that at the same time a note, or other evidence of the debt is taken.

Mr. Justice Clifford clearly recognizes this distinction, also, in Oulton *vs.* Savings—in his opinion, where describing the course of business of that institution, he says:

"Their loans are usually made *upon security of real estate*, but in some cases *upon* bullion, or personal property; no loans are made *upon* bills of exchange, *promissory notes*, or other evidences of personal indebtedness."

17 Wall, 122.

In all the above loans there must have been a bond or note given as the *evidence* of the indebtedness, but the learned judge expressly states the loans not to have been made *upon such note or bond*, but upon other security.

5. This construction of the statute by the government is also repugnant to the rule that statutes, "*in pari materia*" are to have a kindred and harmonious construction.

By this canon, even different statutes relating to a common subject matter, are to be reconciled in their interpretation as bearing upon a common public policy.

Much more then are words and phrases in the same act, and in the same sentence, to be reconciled as parts of a consistent and harmonious description.

"Stocks, bonds, bullion, bills of exchange, and promissory notes, are all grouped together in the same grammatical connection.

They are *each* appropriate and essential portions of a common description.

They describe a business and how it is conducted. There is but *one* business, but it is described by a diversity of operations; there is but *one* action, but it is upon a variety of subjects; upon a portion of these subjects there can be action only in a particular manner. Money can be loaned upon stocks and bullion only in one way—upon them as *collaterals*. It is impossible to advance money *upon* these two, at least, except by *hypothecation;* why then should not this same action be predicated of the remainder? Bonds are as favorite and familiar subjects of hypothecation as stocks, and more so than bullion.

To include them then together with bills and notes as *collaterals*, upon which money is usually loaned or advanced, is to construe the

sentence according to its grammatical context, and in analogy to the rule "*in pari materia*." It is to employ apt and popular phrases to describe the business of a banker as ordinarily understood, and to fill up and complete the modes in which that business is conducted.

While to give it the construction contended for by the government, is to wrest it from its context, and to apply it to an entirely different and independent subject matter. It is to inject into the middle of a description of one class of business, a phrase indicative of not only a different business, but of a different mode of conducting it.

6. Loaning money upon real estate is not within the ordinary functions of banking. Congress, in the National Banking Act, expressly prohibit banks from exercising this function.

It is submitted then, if Congress intended to include it within the statutory definition of a banker's business, they would not have left it to an inference from words not ordinarily conveying that idea, nor inserted it in the midst of a description plainly applicable in all other portions to a different subject matter.

THIRD.

Nor do the defendants have a place of business where the collaterals enumerated in the second clause are *received* for discount, or for sale, and thus come within the definition of bankers, under the third and last of the statutory classifications.

1. It is to be observed that the language of this clause is "where stocks, bonds, bullion, bills of exchange &c., are *received* for discount, or for sale." The language is significant, and *unusual!* and we think intentionally so. It is not where stocks, bonds &c., *are sold*. This would have included a large class of corporations, railroad, municipal, gas, canal, and others, who are engaged in selling or negotiating their own securities. Congress clearly did not intend to include these corporations within its definition of bankers. The defendants are engaged in the *same* business.

They sell their own bonds. These securities are their property ; they are payable on their face, principal and interest, to the defendants themselves. The precise question in this part of the case is, can a man who sells his own property be said properly to *receive* it for sale?

2. The word *receive* is not idle and redundant. To use the language of Mr. Justice Hunt in the recent case of Warren vs. Shook, in construing another word in the same statute, "it *qualifies* all parts of the definition."

2 Otto 704.

Every word in a statute is, by a well settled rule of construction, to have its full force and significance. Nothing is to be regarded as void, superfluous or insignificant,

9th Bacon's Abr. 239, Statute I, 2.

or as Lord Coke quaintly observes, "the good expositor makes every sentence have its due operation. He gives effect to every word of a statute. He does not construe it so that anything should become vain or superfluous. He so expounds it that one part may agree with another, and all may stand together," "*ut res magis valeat quam pereat.*"

Some meaning is to be given by the "good expositor," according to the foregoing rules to the words "receive for sale." What other construction can be given, than a place of business where property is sent by the owner and *received* by the seller for the purpose of sale? This construction is in accordance with the ordinary and popular use of the term. It gives each word its full force and meaning. It does no violence to language. It refers to a well known and recognized business, and it makes the whole statute harmonious and symmetrical.

3. For it will be noticed on a careful examination of the statute, that the third clause is the corollary and complement of the second. The one describes that portion of a banker's business conversant

with the advance of moneys on various collaterals. The other that portion of the same business which concerns the sale of the same kinds of securities It was intended to cover the whole business in both its branches. And it is respectfully submitted that if a banker or broker, as that profession is ordinarily understood, were to advertise his business in all its branches he could not now use more apt and appropriate phraseology than has been furnished by the very words of the statute under consideration, as having a

1. Place of business where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, and promissory notes.
2. A place of business where stocks, bonds, bullion, bills of exchange and promisory notes are *received* for discount or sale.

FOURTH.

If, finally, there should be a doubt upon the whole question, and a fair presumption that Congress has not embraced the defendant's business within its definition of "bankers," then this Court has furnished the rule of solution of such doubt in the wise words of Mr. Justice Hunt, in construing a similar statute.

"If there be any doubt as to the liability of an instrument to taxation, (says the learned Judge) that construction is to be given which is in favor of the *exemption*, because, (quoting Pollock, C. B., in Girr vs. Scudds) a tax cannot be imposed without *clear* and *express* words for that purpose."

"These principles," he adds, "are based on good sense, and are sustained by the authorities."

United States vs. Isham, 17 Wall, 504.

FIFTH.

It is submitted, in conclusion, in view of the foregoing authorities and reasons, that there is no error of law upon the facts found by the Circuit Court, and that the judgment of that Court should be affirmed, with costs.

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